IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 25TH JUNE 2007 / 4TH ASHADHA 1929

WP(C).No. 22949 of 2004(F)

PETITIONER:
---

1. A.MOOSA, S/O. BAPUNHI, NEAR JUMA MASJID,
   ARIKKADI, KUMBLA, KASARGODE.

2. KUNHAMINA, W/O. ABDULLA HAJI,
   THOUFEEQ MANZIL, POST SYRIA, VIA.KUMBLA,
   KASARAGODE.

BY ADV. SMT.S.AMINA

RESPONDENTS:
---

1. TAHSILDAR, KASARAGODE.

2. REVENUE DIVISIONAL OFFICER,
   KASARAGODE.

3. DISTRICT COLLECTOR, KASARAGODE.

BY G.P. SRI. MOHAMMED RAFIQ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1 TRUE COPY OF THE RECEIPT EVIDENCING PAYMENT OF PROPERTY TAX BY THE PETITIONER DATED 28.8.1990

EXT.P1(a) TRUE COPY OF THE RECEIPT EVIDENCING PAYMENT OF PROPERTY TAX BY THE PETITIONER DATED 30.5.1991

EXT.P1(b) TRUE COPY OF DO.DO. DATED 30.5.1991

EXT.P1(c) TRUE COPY OF DO.DO. DATED 21.8.1991

EXT.P2 TRUE COPY OF THE ASSESSMENT ORDER ISSUED BY THE FIRST RESPONDENT DATED 10.6.1998

EXT.P3 TRUE COPY OF THE PROCEEDINGS OF THE 2ND RESPONDENT DATED 15.10.1998

EXT.P4 TRUE COPY OF THE RECEIPT EVIDENCING THE 2ND INSTALMENT OF TAX DATED 18.2.1999

EXT.P5 TRUE COPY OF THE ORDER OF THE THIRD RESPONDENT DATED 10.6.1999

EXT.P6 TRUE COPY OF THE REVENUE RECOVERY INITIATED BY 1ST RESPONDENT DATED 9.8.1999

EXT.P7 TRUE COPY OF THE JUDGMENT IN WPC NO. 16009 OF 2003 DATED 29.3.2004

EXT.P8 TRUE COPY OF THE ORDER PASSED BY THE 3RD RESPONDENT.

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

W.P.C. NO. 22949 OF 2004

Dated this the 25th day of June, 2007

JUDGMENT

Heard counsel for the petitioner and Government Pleader. Petitioner's case is that construction of the building was completed in 1990 and therefore there is no justification to apply plinth area method for assessment of building tax. According to the petitioner, assessment should be based on capital value method which was the provision prior to amendment in 1992. Government Pleader submitted that assessment proceedings was commenced in 1991 itself, inspite of non-filing of return by the petitioner. Since construction of building was admittedly completed prior to 1996 amendment, when the rate of tax was substantially increased, petitioner is entitled to be assessed at the pre-revised rate, that was the rate introduced by amendment dated 10.2.1992. I do not think capital value method assessment will be more beneficial to the petitioner because the tax payable under the plinth area method at the 1992-tariff will be very low. Moreover, computation of capital value will lead to further litigation. W.P. is

accordingly partly allowed directing the first respondent to revise assessment based on plinth area by applying the plinth area rate prevailing prior to 1996 amendment. Tax paid by the petitioner will be adjusted and if any excess is paid, the same will be refunded to the petitioner after completion of revision of assessment, which should be done within three months from the date of production of a copy of this judgment by the petitioner. However, if petitioner so opts, the Tahsildar will complete assessment based on capital value because building construction was completed before 1992.

(C.N.RAMACHANDRAN NAIR)
Judge